HON'BLE SRI G.S. SINGHVI,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD.

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W.P.NO. 24606 OF 2005.

BETWEEN:

M/s Maruti Cottex Ltd.,
rep. By its General Manager (Finance)
and authorised representative
Sri Pratik Gandhi, S.No.257, Choutuppal,
Nalgonda District, Andhra Pradesh.
…..
PETITIONER.

AND

1. The Appellate Authority For Industrial
and Financial Reconstruction, 10th floor,
Jeevan Prakash Building, 25, Kasturba
Gandhi Marg, New Delhi,
and others.
….. RESPONDENTS.

:: ORDER ::

Counsel for the petitioner : Mr. Milind G. Gokhale.

Counsel for the respondent 1 & 2 :

6 and 7 M.A.Rajashekar Reddy

Counsel for the respondent No.3: G.P. for Industries.

Counsel for the respondent Nos.4 & 5: Smt. P.Bala Rani.

24th JANUARY, 2006.

Per G.S. Singhvi, CJ

This is a petition for quashing order dated 27.07.2005 passed by the Appellate Authority for Industrial and Financial Reconstruction (for short 'AAIFR') whereby the appeal filed by the petitioner against show-cause notice issued by the Board for Industrial & Financial Reconstruction (for short 'BIFR') as also the appeal filed against the order of winding up were dismissed.

The petitioner is a Company registered under the Companies Act, 1956. It is engaged in the business of manufacture of cotton fabric. For running its business, the petitioner obtained loan from various financial institutions including State Bank of Hyderabad and Industrial Development Bank of India. In the year 2000, the petitioner approached BIFR for being declared as a sick industrial company under terms of Section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985. By an order dated 15-11-2000, the BIFR declared the petitioner as a sick industrial company and appointed Industrial Development Bank of India as the operating agency. After considering the report of the operating agency, the BIFR in its meeting held on 2-7-2003

decided to recommend winding up of the petitioner. Accordingly, a reference was made to the High Court for taking up the issue relating to winding up of the petitioner.

The petitioner questioned the notice issued by the BIFR in Appeal No.170 of 2003. It also filed Appeal No.316 of 2003 challenging the decision of the BIFR in the matter of winding up. Later on, it filed Writ Petition No.23635 of 2003 with the complaint that on account of non-availability of the members of AAIFR, its prayer for stay has not been taken up for consideration. By an order dated 11-11-2003, this Court stayed further proceedings.

After constitution of the AAIFR, the appeals of the petitioner were taken up for hearing and were dismissed on 27-7-2005 because no one appeared on its behalf. The order passed by the AAIFR reads as under:

> " No one appears on behalf of the appellant even after repeated calls. Perused the impugned order. We do not find any infirmity or illegality in the impugned order. Appeal is dismissed".

The appellant has challenged the aforementioned order mainly on the ground of denial of effective opportunity of hearing and lack of reasons. In paragraphs 5 and 6 of the affidavit of Sri Pratik Gandhi, General Manager (Finance) and authorised representative of the Company, the following averments have been made:

> "5. It would thus be seen that the appeals have been dismissed without passing a speaking order and without going into the merits of the case and without even hearing the petitioner. In fact the petitioner had appointed M/s R. Bohra and Associates, Chartered Accountants, to appear on their behalf before the Appellate Tribunal. However these persons who hold the General Power of Attorney on behalf of us never appeared before the Tribunal nor did they ever informed us that the appeals are coming up for hearing. For the first time the petitioner has got knowledge that the appeals are dismissed was when they received a communication dated 8.8.2005 from the Appellate Authority which was received by them in the month of November, 2005, that the appeals have been dismissed. Immediately the petitioner has approached this Hon'ble Court for seeking redressal of its grievances. It may not be out of place to point out that Appeal No.170/2003 was filed against the order of show-cause notice issued by the BIFR as to

why the company should not be wound up. Subsequently on 02.07.2003 BIFR passed an order of winding up against which Appeal No.316/2003 was filed. That the BIFR while the Appeal No.170/2003 was pending before the Appellate Tribunal passed the final order of winding up of the company due to which the second appeal had to be filed. It will therefore be seen that prima facie the order of the BIFR is per se illegal since it has been ordered during the pendency of the earlier appeal.

6. That all these facts need to be brought to the notice of the Hon'ble Tribunal at the time of hearing. However, due to non-appearance of the petitioner's representatives and due to the fact that the petitioner's representatives have never informed the petitioner as to the dates of hearing, the matter was taken up and a non-speaking order, practically an ex parte order of dismissal has been passed. That being aggrieved by the same, the petitioner is filing this writ petition".

In paragraph 7 of the affidavit of Sri Pratik Gandhi, it has been averred that efforts are being made to repay the debts and possibility of negotiated settlements are also being worked out.

Notice of the writ petition has been served on the non-petitioners including State Bank of Hyderabad through its Chairman and Managing Director and Industrial Development Bank of India through its Chairman and Managing Director, but neither any counter has been filed to controvert the averments contained in the affidavit filed in support of the petition nor anyone has appeared on their behalf to contest the prayer made by the petitioner.

Learned Government Pleader representing the State of Andhra Pradesh says that the State Government has nothing to do with the proceedings initiated under the Sick Industrial Companies (Special Provisions) Act, 1985.

Sri Milind G. Gokhale, learned counsel for the petitioner argued that non-appearance of its client before the AAIFR on 27.07.2005 was not deliberate and therefore AAIFR should not have dismissed the appeals on merits and that too without assigning any reason. Learned counsel emphasized that the petitioner had engaged a reputed Chartered Accountant to represent its cause before AAIFR, but the latter, without any cause, failed to appear on the

date of hearing and for the lapse of the concerned Chartered Accountant, his client should not be made to suffer. He further argued that even if the AAIFR thought that an adverse order should be passed on account of non-appearance of the representative of the petitioner, then the appropriate course would have been to dismiss the appeals in default which could enable his client to seek restoration thereof. Learned counsel also invited our attention to the draft negotiated settlement dated 22.08.2005 to show that sincere efforts have been made by the petitioner to repay the loan amount, etc.

We have given serious thought to the arguments of the learned counsel. Although we are not fully convinced with the explanation given on behalf of the petitioner for non-appearance of its representative before the AAIFR on 27.07.2005, but keeping in view the fact that the petitioner has made efforts to clear the outstanding dues of the financial institutions and also that the order under challenge does not contain indication of application of mind by the AAIFR to the merits of the plea taken by the petitioner against the decision of the BIFR., we feel that ends of justice would be met by setting aside the impugned order with a direction to the AAIFR to give the petitioner an opportunity of hearing.

For the reasons stated above, the writ petition is allowed. Order dated 27.07.2005 passed by the AAIFR dismissing Appeal Nos.170 and 316 of 2003 filed by the petitioner are set aside and the case is remanded to the AAIFR for fresh adjudication of the appeals on merits. The representative of the petitioner is directed to appear before the AAIFR on 06.03.2006 and present a copy of this order. Thereafter, the AAIFR shall issue notice to the concerned parties and pass appropriate order after hearing the representative of the petitioner as well as the financial institutions. No costs.

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G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

Dated: 24.01.2006.

VRK / svs

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HON'BLE SRI G.S. SINGHVI,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD.

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W.P.NO. 24606 OF 2005.

(Order of the Bench delivered by

Hon'ble The Chief Justice)

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Dt: 24-01-2006.